

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In The Matter of the Application of

LANDMARK WEST!; et al.,

Petitioners,

For a Judgment pursuant to Article 78 of the Civil Practice  
Law and Rules

- against -

AMANDA M. BURDEN, Chair of the New York City  
Planning Commission; et al.,

Respondents.

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STATE OF NEW YORK     )

: SS:

COUNTY OF NEW YORK    )

**AFFIDAVIT OF  
RONDA WIST**

Assigned to: Hon.  
Walter B. Tolub

Index No. 03/119036

IAS Part 15

**RONDA WIST**, being duly sworn, deposes and says:

1. I am the Executive Director of the New York City Landmarks Preservation Commission (“Landmarks Commission” or “LPC”), and have been since 1997. I have a Masters of Science degree in Historic Preservation from Columbia University.

2. I understand that individuals and groups opposed to the City’s disposition of the building at 2 Columbus Circle to the Museum of Arts and Design (“the project”) have instituted an Article 78 challenge to the environmental review underlying both the Negative Declaration issued pursuant to City Environmental Quality Review (“CEQR”) and the City’s Uniform Land Use Review Procedure (“ULURP”). I make this affidavit in support of the City’s answer to the petition.

3. I make this affidavit based upon my review of Landmarks Commission records, conversations with current employees and Commissioners of the Landmarks Commission, and upon my own personal knowledge and experience.

**A. LPC Review Under New York City’s Landmark’s Law**

4. Pursuant to Section 3020 of the New York City Charter (the “City Charter”) and Section 25-301 et seq. of the New York City Administrative Code (the “Landmarks Law”), the LPC has been vested with the exclusive authority and discretion to consider and designate landmarks, historic districts, and scenic and interior landmarks, subject to modification and disapproval by the New York City Council and the Mayor.

5. The LPC is an expert agency and consists of 11 commissioners, appointed by the Mayor with Council consent, and a small professional staff. The Landmarks Law requires that the Commission have at least three architects, one historian, one city planner or landscape architect, one realtor and one representative from each borough.

6. The Landmarks Law defines a property eligible for landmark status as “any improvement [building, structure, place, work of art and/or object], any part of which is thirty years or older, which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation.” Landmarks Law § 25-302(n). The Landmarks Commission *may*, upon adoption of a motion, calendar an item to be considered for landmark designation. 63 RCNY § 1-02.

7. The building at 2 Columbus Circle has not been designated as a landmark by the Landmarks Commission.

8. While the LPC has exclusive discretion to determine which buildings are considered for landmark designation, it has developed a process to allow members of the public

to propose buildings for evaluation as potential landmarks, known as a Request for Evaluation (“RFE”).

9. The RFE form asks that the requesting individual provide as much information about the property as possible, including photographs and/or slides. Once the Landmarks Commission receives an RFE, an internal Committee - consisting of the Chairman, the Executive Director, the Director of Research, and other agency staff members - reviews the materials and discusses whether the property meets the minimum criteria for designation.

10. If the internal Committee determines that a proposed historic property merits further consideration, the property is reviewed by the Designation Committee, which consists of no more than five Commissioners and staff. The Commissioners on the Designation Committee then vote on whether to recommend the property to the full Commission for review. A positive recommendation by the Designation Committee results in the property being brought to the full LPC at a public meeting for consideration and a calendaring vote in accordance with the procedures set forth at Title 63, Section 1-02 of the Rules of the City of New York. If the full Commission votes to calendar the property, a public hearing is held. If, however, the Commission declines to calendar a public hearing or designate a building as a landmark, the Landmarks Law does not prohibit reconsideration in the future.

**B. The Landmarks Commission Devotes Its Limited Resources to Appropriate Application of Its Expertise**

11. With the exception of the Chairman, Landmarks Commission commissioners are not paid by the City. They attend Landmarks Commission public meetings and hearings approximately three Tuesdays each month. At these meetings, they consider designation of new landmarks, applications for Certificates of Appropriateness (pursuant to Administrative Code § 25-307), requests for hardship applications to demolish or alter

Landmarks (pursuant to Administrative Code §25-309), and promulgation of Landmarks Commission regulations. Committee meetings are often scheduled on those Tuesdays when a public meeting or hearing is not scheduled or during a lunch break on a meeting or hearing day.

12. The Landmarks Commission designates approximately 15-25 individual landmarks each fiscal year, in addition to designating historic districts. Over the last four years the agency has received, on average, approximately 170 RFEs each year. During this same time period the Commission has reviewed more than 7,000 applications annually to renovate, modify, or otherwise alter designated buildings.

13. The Landmarks Commission employs a professional staff in its Research Department that review RFEs and research and prepare Designation Reports. Staff in this department have masters degrees or doctorates in fields such as art history, historic preservation and architectural history.

14. The Landmarks Law vests the Commission with absolute discretion regarding designation. There are no statutory provisions which require any particular action on the part of the Landmarks Commission with respect to an RFE, which require a public hearing on an RFE, or which specify time frames during which the Landmarks Commission is required to act on an RFE.

15. Not every building proposed by the public through the RFE process should, or does, come before the full Commission. Given LPC's volunteer commissioners and limited staff, requiring the Landmarks Commission to perform the discretionary acts associated with consideration of a landmark on every single RFE would significantly impair - if not destroy - the ability of the Landmarks Commission to appropriately set priorities and to otherwise function in accordance with its legal mandate.

**C. Landmarks Commission Review of the Building at 2 Columbus Circle**

16. On or about October 12, 1995 the Landmarks Commission received an RFE from Olive Freud to consider the building at 2 Columbus Circle for landmark status.

17. It is my understanding that, in June of 1996, members of the Landmarks Commission's Research Department met with the Designation Committee, including its architectural historian, to discuss the building at 2 Columbus Circle. Present at the meeting were the five commissioners who then sat on the Designation Committee: Chairperson Jennifer Raab, Vicki Match Suna, Reverend Thomas Pike, Charles Sachs and Sarah Landau. Vickie Match Suna is an architect (appointed in 1991). Sarah Landau is an architectural historian. Charles Sachs is a realtor. Reverend Pike is a layperson (appointed in 1991 and reappointed in 1995). Jennifer J. Raab served as the Chairperson of the Landmarks Commission at the time. Also in attendance was Anne Seel, then executive director of LPC.

18. Based upon the books and records of this office, and upon information and belief, the Designation Committee reviewed and evaluated the information submitted with the RFE, as well as other information from the Landmarks Commission files, including slides of the building. The Designation Committee declined to recommend that the full Commission consider designating the building.

19. Ms. Freud was notified that the LPC would not consider designating the building.

20. Since then, other individuals have submitted RFEs and letters requesting a public hearing for the building at 2 Columbus Circle. I have frequently responded to these letters by referencing the Landmarks Commission's 1996 decision.

21. Notwithstanding the press surrounding the City's disposition of 2 Columbus Circle and the change in the mayoral administration, no Commission members have

expressed to me an interest in revisiting consideration of the building for landmark designation. In fact, several have expressed the opposite opinion, namely that there is no reason to revisit designating the building as a landmark.

**D. Review Under New York State's Historic Preservation Law**


22. In order to list a building on either the State or National Historic Registers, a "declaration of eligibility" must be issued by the State Historic Preservation Office. This declaration indicates that the building meets the criteria for eligibility. It must be issued before the building will be considered for inclusion on either the State or National Historic Registers. To my knowledge, the building at 2 Columbus Circle, which was built less than 50 years ago, has not been declared eligible for inclusion on either the State or National Historic Registers.

**E. LPC's Role in the Environmental Review of 2 Columbus Circle**

23. In or about January 2003, the Landmarks Commission received a copy of the draft Environmental Assessment Statement ("EAS") for the project at 2 Columbus Circle from the New York City Economic Development Corporation ("EDC"). The Landmarks Commission typically receives and often comments on a draft EAS where a project may impact landmarks, historic districts or other historic resources. In such circumstances, staff from the Commission's Research Department review the draft EAS and issue comments that are in conformance with any stated position of the Commission and that reflect staff opinion.

24. On January 24, 2003, the Landmarks Commission submitted its comments on the EAS for the 2 Columbus Circle project and noted, among other things, that language in the draft EAS stating that the project site is eligible for designation as a landmark should be removed. This comment was not based on the theoretical definition of "eligibility" that petitioners contend should govern the Commission's consideration of proposed buildings. Rather, the comment was premised on a practical and functional definition of the term.

25. Because the Landmarks Commission previously considered and rejected the request to designate 2 Columbus Circle as a landmark, and because there has been no change in that opinion, the building is not, for purposes of this environmental review, "eligible" for designation as a landmark in any practical sense of the word. In other words, while it is more than 30 years old, this building does not, in the eyes of the Landmarks Commission, possess a special character or special historical or aesthetic interest or value that would make it worthy of designation as a landmark. Accordingly, LPC's comments on the draft EAS concerning the building's "eligibility" as a landmark accurately reflected the Landmark Commission's expert opinion and were appropriately incorporated into the final draft of the EAS.

  
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 RONDA WIST

Sworn to before me this 2<sup>nd</sup> day  
 of February, 2004.

  
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 NOTARY PUBLIC

MARK A. SILBERMAN, ESQ.  
 Notary Public, State of New York  
 No. 02315058525  
 Qualified in Kings County  
 Commission Expires 7/24/04